

## PART 78—VOLUNTARY STATE TAX WITHHOLDING FROM RETIRED PAY

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AUTHORITY: 10 U.S.C. 1045.

SOURCE: 50 FR 47220, Nov. 15, 1985, unless otherwise noted.

### § 78.1 Purpose.

Under 10 U.S.C. 1045, this part provides implementing guidance for voluntary State tax withholding from the retired pay of uniformed Service members.

### § 78.2 Applicability and scope.

(a) This part applies to the Office of the Secretary of Defense, the Military Departments, the Coast Guard (under agreement with the Department of Transportation), the Public Health Service (PHS) (under agreement with the Department of Health and Human Services and the National Oceanic and Atmospheric Administration (NOAA) (under agreement with the Department of Commerce). The term "Uniformed Services," as used herein, refers to the Army, Navy, Air Force, Marine Corps, Coast Guard, commissioned corps of the PHS, and the Commissioned corps of the NOAA.

(b) It covers members retired from the regular and reserve components of the Uniformed Services who are receiving retired pay.

### § 78.3 Definitions.

(a) *Income tax.* Any form of tax under a State statute where the collection of that tax either imposes on employers generally the duty of withholding sums from the compensation of employees and making returns of such sums to the State, or grants employers generally the authority to withhold sums from the compensation of employees if any employee voluntarily elects to have such sum withheld. And, the duty to withhold generally is imposed, or the authority to withhold generally is granted, with respect to the compensa-

tion of employees who are residents of such State.

(b) *Member.* A person originally appointed or enlisted in, or conscripted into, a Uniformed Service who has retired from the regular or reserve component of the Uniformed Service concerned.

(c) *Retired pay.* Pay and benefits received by a member based on conditions of the retirement law, pay grade, years of service, date of retirement, transfer to the Fleet Reserve or Fleet Marine Corps Reserve, or disability. It also is known as retainer pay.

(d) *State.* Any State, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

### § 78.4 Policy.

(a) It is the policy of the Uniformed Services to accept written requests from members for voluntary income tax withholding from retired pay when the Department of Defense has an agreement for such withholding with the State named in the request.

(b) The Department of Defense shall enter into an agreement for the voluntary withholding of State income taxes from retired pay with any State within 120 days of a request for agreement from the proper State official. The agreement shall provide that the Uniformed Services shall withhold State income tax from the monthly retired pay of any member who voluntarily requests such withholding in writing.

### § 78.5 Procedures.

(a) The amounts withheld during any calendar quarter shall be retained by the Uniformed Service and disbursed to the States during the month following that calendar quarter. Payment procedures shall conform, to the extent practicable, to the usual fiscal practices of the Uniformed Services.

(b) A member may request that the State designated for withholding be changed and that the subsequent withholdings be remitted as amended. A member may revoke his or her request for withholding at any time. Any request for a change in the State designated or any revocation is effective on the first day of the month after the

month in which the request or revocation is processed by the Uniformed Service concerned, but in no event later than on the first day of the second month beginning after the day on which the request or revocation is received by the Uniformed Service concerned.

(c) A member may have in effect at any time only one request for withholding under this part. A member may not have more than two such requests in effect during any one calendar year.

(d) The agreements with States may not impose more burdensome requirements on the United States than on employers generally or subject the United States, or any member, to a penalty or liability because of such agreements.

(e) The Uniformed Services shall perform the services under this part without accepting payment from States for such services.

(f) The Uniformed Services may honor a retiree's request for refund until a payment has been made to the State. After that, the retiree may seek a refund of any State tax overpayment by filing the appropriate State tax form with the State that received the voluntary withholding payments. The Uniformed Services may honor a retiree's request for refund until a payment has been made to the State. State refunds will be in accordance with State income tax policy and procedures.

(g) A member may request voluntary tax withholding by writing the retired pay office of his or her Uniformed Service. The request shall include: The member's full name, social security number, the fixed amount to be withheld monthly from retired pay, the State designated to receive the withholding, and the member's current residence address. The request shall be signed by the member, or in the case of incompetence, his or her guardian or trustee. The amount of the request for State tax withholding must be an even dollar amount, not less than \$10 or less than the State's minimum withholding amount, if higher. The Uniformed Services' retired pay office addresses are given as follows:

(1) Army—Commanding Officer, Army Finance and Accounting Center (Dept. 90), Indianapolis, IN 46249, (800) 428-2290.

(2) Navy—Commanding Officer, Navy Finance Center (Code 301), Anthony J. Celebrezze Federal Building, Cleveland, OH 44199, (800) 321-1080.

(3) Air Force—Commander, Air Force Accounting and Finance Center, Attn: RP, Denver, CO 80279, (800) 525-0104.

(4) Marine Corps—Commanding Officer (CPR), Marine Corps Finance Center, Kansas City, MO 64197, (816) 926-7130.

(5) Coast Guard—Commanding Officer (Retired), U.S. Coast Guard Pay and Personnel Center, 444 S.E. Quincy Street, Topeka, KS 66683, (913) 295-2657.

(6) PHS—U.S. Public Health Service, Compensation Branch, 5600 Fisher Lane, Room 4-50, Rockville, MD 20857, (800) 638-8744 (except AK & MD), (301) 443-6132 (AK & MD).

(7) NOAA—Commanding Officer, Navy Finance Center (Code 301), Anthony J. Celebrezze Federal Building, Cleveland, OH 44199, (800) 321-1080.

(h) If a member's retired pay is not sufficient to satisfy a member's request for a voluntary State tax, then the withholding will cease. A member may initiate a new request when such member's retired pay is restored in an amount sufficient to satisfy the withholding request.

(i) A State requesting an agreement for the voluntary withholding of State tax from the retired pay of members of the Uniformed Services shall indicate, in writing, its agreement to be bound by the provisions of this part. If the State proposes an agreement that varies from the Standard Agreement, the State shall indicate which provisions of the Standard Agreement are not acceptable and propose substitute provisions. The letter shall be addressed to the Assistant Secretary of Defense (Comptroller), the Pentagon, Washington, DC 20301. To be effective, the letter must be signed by a State official authorized to bind the State under an agreement for tax withholding. Copies of applicable State laws that authorize employers to withhold State income tax and authorize the official to bind the State under an agreement for tax withholding shall be enclosed with the letter. The letter also shall indicate the title and address of the official whom the Uniformed Services may contact to obtain information necessary for implementing withholding.

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(j) Within 120 days of the receipt of a letter from a State, the Assistant Secretary of Defense (Comptroller), or designee, will notify the State, in writing, that DoD has either entered into the Standard Agreement or that an agreement cannot be entered into with the State and the reasons for that determination.

[50 FR 47220, Nov. 15, 1985, as amended at 50 FR 49930, Dec. 6, 1985]

### § 78.6 Responsibilities.

(a) The Assistant Secretary of Defense (Comptroller) shall provide guidance, monitor compliance with this part, and have the authority to change or modify the procedures set forth.

(b) The Secretaries of the Military Departments and Heads of the other Uniformed Services shall comply with this part.

### § 78.7 Standard agreement.

Standard Agreement For Voluntary State Tax Withholding From The Retired Pay Of Uniformed Service Members

#### *Article I—Purpose*

This agreement, hereafter referred to as the “Standard Agreement,” establishes administrative procedures and assigns responsibilities for voluntary State tax withholding from the retired pay of Uniformed Service members consistent with section 654 of the Department of Defense Authorization Act for Fiscal Year 1985 (Pub. L. 98-525), codified as 10 U.S.C. 1045.

#### *Article II—Parties*

The parties to this agreement are the Department of Defense on behalf of the Uniformed Services and the State that has entered into this agreement pursuant to 10 U.S.C. 1045.

#### *Article III—Procedures*

The parties to the Standard Agreement are bound by the provisions in title 32, Code of Federal Regulations, part 78. The Secretary of Defense may amend, modify, supplement, or change the procedures for voluntary State tax withholding from retired pay of Uniformed Service members after giving notice in the FEDERAL REGISTER. In the event of any such changes, the State will be given 45 days to terminate this agreement.

#### *Article IV—Reporting*

Copies of Internal Revenue Service Form W-2P, “Statement for Recipients of Annu-

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ities, Pensions, Retired Pay or IRA Payments,” may be used for reporting withheld taxes to the State. The media for reporting (paper copy, magnetic tape, etc.) will comply with State reporting standards that apply to employers in general.

#### *Article V—Other Provisions*

A. This agreement shall be subject to any amendment of 10 U.S.C. 1045 and any regulations issued pursuant to such statutory change.

B. In addition to the provisions of Article III, the agreement may be terminated by a party to the Standard Agreement by providing the other party with written notice to that effect at least 90 days before the proposed termination.

C. Nothing in this agreement shall be deemed to:

1. Require the collection of delinquent tax liabilities of retired members of the Uniformed Services;

2. Consent to the application of any provision of State law that has the effect of imposing more burdensome requirements upon the United States than the State imposes on other employers, or subjecting the United States or any member to any penalty or liability;

3. Consent to procedures for withholding, filing of returns, and payment of the withheld taxes to States that do not conform to the usual fiscal practices of the Uniformed Services;

4. Allow the Uniformed Services to accept payment from a State for any services performed with regard to State income tax withholding from the retired pay of Uniformed Service members.

## PART 79—CONTRIBUTIONS TO STATE RETIREMENT PROGRAMS FOR NATIONAL GUARD TECHNICIANS

Sec.

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79.7 Standards for contribution agreements with State retirement programs for National Guard technicians.

AUTHORITY: E.O. 10996, 5 U.S.C. 5518, 8331–8348, and 32 U.S.C. 709.

SOURCE: 47 FR 34982, Aug. 12, 1982, unless otherwise noted.

### § 79.1 Reissuance and purpose.

This part is reissued to update the policies that implement title 5 U.S.C.